IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 734 OF 2007

WITH

CIVIL APPLICATION NO. 1036 OF 2007

S.P.Engineers & Ors. ... Appellants
(Orig. Defendants)

Vs.

Smt. Mohanabai Nandlal Rathi & Ors. Respondents
(Orig. Plffs.Nos.1 to 6)

Mr. Y.S.Jahagirdar, Senior Counsel a/w Mr. M.S.Karnik, Advocate, for the appellants.
Mr. V.A.Thorat, Senior Counsel a/w Mr. M.M.Sathaye,Advocate, for Respondents Nos.1 to 4.
Miss Leena Patil,Advocate for Respondents Nos. 7 & 8.

CORAM: J.H.BHATIA,J.

DATE: 30th November,2007.

P.C.

1. Learned Counsel for the appellants and the learned Counsel for respondents Nos. 7 and 8 make a

statement that respondents Nos. 7 and 8 may be transposed as appellants Nos. 3 and 4 in the present Appeal. Leave to amend and transpose respondents Nos. 7 and 8 as appellants Nos. 3 and 4. Amendment to be effected immediately.

2. Heard learned Counsel for the parties.

3. Admittedly, the plaintiffs, who are the respondents before this Court, are the owners of the property in dispute. Originally plaintiffs entered into a development agreement with the defendants Nos. 1 and 2 on 8.4.2002. In pursuance of the aforesaid agreement, the plaintiffs also executed a power of attorney in favour of defendants Nos. 1 and 2. By virtue of the said agreement, the entire consideration of Rs.4,40,00,000/- was received by the plaintiffs and defendants Nos 1 and 2 were put in possession of the land. As per the agreement, the construction was to be completed within five years and then the conveyance deed was to be executed by the plaintiffs in favour of defendant Nos.1 and 2. Defendants Nos. 1 and 2 entered into an agreement with defendants Nos. 3 and 4 and gave power of development to them as per the registered document dated 15.9.2005. According to the plaintiffs, the defendants have failed to perform the terms of the contract and, therefore, the plaintiffs have revoked the

power of attorney executed by them in favour of defendants Nos. 1 and 2. They filed a suit claiming declaration that the transaction between the plaintiffs and defendants Nos. 1 and 2 is validly rescinded and the agreement dated 15.9.2005 between the defendants Nos. 1 and 2 on the one hand and defendants Nos. 3 and 4 on the other is not legal and not binding on the plaintiffs. They also claimed injunction restraining the defendants from making development, construction and creating third party interest. They filed an application before the trial Court seeking temporary injunction of the same nature. The application was opposed by the defendants on the ground that having received the full consideration amount, the plaintiffs cannot terminate the contract and, therefore, they are not entitled to get any relief from the Court. It was contended that the plaintiffs have filed the suit only for extortion. After hearing the parties, the learned trial Court restrained the defendants from creating third party interest in the suit property as well as from carrying out any development and construction. Being aggrieved by the said order, the defendants have preferred the present appeal.

4. It appears that the learned trial Court granted the temporary injunction in favour of the plaintiffs only on the ground that if the temporary injunction is

not granted and the status quo of the property is not maintained, the suit itself may become infructuous. However, it appears that on facts and merits, the plaintiffs prima facie, have no case because they had entered into an agreement for sale of the property for consideration of Rs.4,40,00,000/- in favour of defendant Nos.1 and 2 and had received full consideration amount at the time of entering into contract. In view of this, they had also executed a power of attorney authorising the defendants Nos. 1 and 2 to carry on development/ construction and also to create third party interest. In view of the fact that the plaintiffs have already received full consideration amount as per the agreement, the only thing required to be done by the plaintiffs is to execute conveyance deed of the property in favour of the defendants and nothing more. They have no more interest in the property. Normally, a power of attorney can be revoked, but in the peculiar circumstances of this case, it is difficult to accept the contention of the plaintiffs that the power of attorney has been lawfully terminated. Defendants Nos. 1 and 2 were put in possession of the property on the basis of the aforesaid agreement and assuming that the plaintiffs would execute the sale deed in due course of time as per the agreement, they also entered into further agreement with defendants Nos. 3 and 4 and authorised them to make development and construction. Prima facie nothing

wrong can be found in the conduct of the defendants. Therefore, in my considered opinion, the plaintiffs are not entitled to any temporary injunction in the matter.

5. Mr. Thorat, learned Senior Counsel for the plaintiffs-respondents contended that where the construction is made and third party interest is created in favour of the proposed purchasers of the flats, the owner of the land will have certain responsibility towards such purchasers under the provisions of the Maharashtra Ownership Flats Act and if the defendants fail to comply with the terms of the contract with the third parties, the plaintiffs could be held liable by civil as well as criminal action and therefore to protect the plaintiffs, it is necessary that injunction is granted in favour of plaintiffs. If the plaintiffs are really so much worried about their own protection or about the protection of the third parties, who may enter into contracts for purchase of flats, the plaintiffs may execute conveyance deed of the land in favour of the defendants as per the agreement and get rid of the property as well as other responsibilities. Mr. Thorat pointed out that the defendants have not filed suit for specific performance of the property. At this stage, it may also be noted that the learned Counsel for the defendants Nos.3 and 4/respondents Nos. 1 and 2 also made a statement that the defendants are willing to pay

some more amount, which may be Rs.15 lacs or more, but this offer was not accepted by the other side as the present market value of the land may be Rs.50 crores. This indicates that the plaintiffs have filed the suit only to extract more money finding that the market value of the land has increased rapidly during the lat 4 - 5 years but because they have already received the full consideration amount at the time of entering into contract, they cannot have grudge about it. Only thing that the defendants will have to do is to give an undertaking to the Court and also make known to all the possible purchasers of or investors in this property that the suit is pending in the Court and the development and construction shall be subject to the result of the suit and in case the plaintiffs succeed, it may be required to be pulled down. They will also have to make it clear to the proposed purchasers of the flats/property that the plaintiffs/owners of land will not be responsible for any breach of contract between the defendants and their customers.

6. In view of the above observations, the Appeal is allowed. The impugned order is hereby set aside subject to the condition that the defendants/appellants shall give an undertaking to the above effect to this Court within 2 weeks from today.

7. As the Appeal itself is disposed of, C.A. No.1036 of 2007 does not survive and stands disposed of.

(J.H.BHATIA,J.)